

STATE: MINNESOTA

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year thereafter.

F. The Commissioner shall reestablish the nursing facility's rental rate following the refinancing using the new debt and interest expense information for the purpose of measuring future incremental rental increases.

SECTION 15.1377 Special property rate setting. For rate periods beginning on October 1, 1992, and for rate years beginning after June 30, 1993, the property-related payment rate for a nursing facility approved for total replacement under the moratorium exception process through an addition to another nursing facility shall have its property-related rate under Section 15.1370 recalculated using the greater of actual resident days or 80 percent of capacity days. This rate shall apply until the nursing facility is replaced or until the moratorium exception authority lapses, whichever is sooner.

SECTION 15.1378 Indexing thresholds. Beginning January 1, 1993, and each January 1 thereafter, the Commissioner shall annually update the dollar thresholds in Section 15.1373, item D, Sections 15.1373 and 15.1374, by the inflation index referenced in Section 15.090, item A, subitem (4).

SECTION 15.138 Plant and maintenance costs. For the rate years beginning on or after July 1, 1987, the Department shall allow as an expense in the reporting year of occurrence the lesser of the actual allowable plant and maintenance costs for supplies, minor equipment, equipment repairs, building repairs, purchased services and service contracts, except for arms-length service contracts whose primary purpose is supervision, or \$325 per licensed bed.

SECTION 15.139 Property rate adjustment for required improvements. The Commissioner shall add an adjustment to the property related payment rate of a certified freestanding boarding care home reflecting the costs incurred in that nursing facility to install a communication system in every room and hallway handrails, as required under the 1987 federal Omnibus Budget Reconciliation Act, Public Law 100-203. The property related payment rate increase is only available if, and to the extent that, the nursing facility's existing property related payment rate, minus the nursing facility's allowable principal and interest costs and equipment allowance, is not sufficient to cover the costs of the required improvements. Each nursing facility eligible for the adjustment shall submit to the Commissioner a detailed estimate of the cost increases the facility will incur in order to meet the new physical plant requirements. Ten percent of the amount of the costs that are determined by the Commissioner to be reasonable for the nursing facility to meet the new requirements, divided by resident days, must be added to the nursing facility's property related

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payment rate. The adjustment shall be added to the property payment rate. The resulting recalculated property payment rate is effective October 1, 1990, or 60 days after a nursing facility submits its detailed cost estimate, whichever is later. The adjustment is only available to a certified, freestanding boarding care home that cannot meet the requirements of Public Law number 100-203 for communications systems and handrails as demonstrated to the satisfaction of the Commissioner of Health. When the Commissioner of Human Services establishes that it is not cost effective to upgrade an eligible certified freestanding boarding care home to the new standards, the Commissioner of Human Services may exclude the certified freestanding boarding care home if it is an institution for mental diseases or a certified freestanding boarding care home that would have been determined to be an institution for mental diseases but for the fact that it has 16 or fewer licensed beds.

SECTION 15.140 Determination of interim and settle-up payment rates. The Department shall determine interim and settle-up payment rates according to items A to J.

A. A newly-constructed nursing facility, or one with a capacity increase of 50 percent or more, may submit a written application to the Department to receive an interim payment rate. The nursing facility shall submit cost reports and other supporting information as required in Sections 1.000 to 18.050 for the reporting year in which the nursing facility plans to begin operation at least 60 days before the first day a resident is admitted to the newly-constructed nursing facility bed. The nursing facility shall state the reasons for noncompliance with Sections 1.000 to 18.050. The effective date of the interim payment rate is the earlier of either the first day a resident is admitted to the newly-constructed nursing facility or the date the nursing facility bed is certified for medical assistance. The interim payment rate for a newly-constructed nursing facility, or a nursing facility with a capacity increase of 50 percent or more, is determined under items B to D.

B. The interim payment rate must not be in effect more than 17 months. When the interim payment rate begins between May 1 and September 30, the nursing facility shall file settle-up cost reports for the period from the beginning of the interim payment rate through September 30 of the following year. When the interim payment rate begins between October 1 and April 30, the nursing facility shall file settle-up cost reports for the period from the beginning of the interim payment rate to the first September 30 following the beginning of the interim payment rate.

C. The interim payment rate for a nursing facility which commenced construction prior to July 1, 1985, is determined under the temporary rule then in effect, except that capital assets must be classified under Sections 1.000 to 18.050.

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D. The interim property-related payment rate for a nursing facility which commences construction after June 30, 1985, is determined as follows:

(1) At least 60 days before the first day a resident is admitted to the newly-constructed nursing facility bed and upon receipt of written application from the nursing facility, the Department shall establish the nursing facility's appraised value according to Sections 15.010 and 15.040.

(2) The nursing facility shall project the allowable debt and the allowable interest expense according to Sections 15.050 and 15.070.

(3) The interim building capital allowance must be determined under Section 15.080 or 15.090.

(4) The equipment allowance during the interim period must be the equipment allowance computed in accordance with Section 15.100 which is in effect on the effective date of the interim property-related payment rate.

(5) The interim property-related payment rate must be the sum of subitems (3) and (4).

(6) Anticipated resident days may be used instead of 96 percent capacity days.

E. The settle-up property-related payment rate and the property-related payment rate for the nine months following the settle-up for a nursing facility which commenced construction before July 1, 1985, is determined under the temporary rule then in effect. The property-related payment rate for the rate year beginning July 1 following the nine-month period is determined under Sections 15.000 to 15.140.

F. The settle-up property-related payment rate for a nursing facility which commenced construction after June 30, 1985, shall be established as follows:

(1) The appraised value determined in item D, subitem (1) must be updated in accordance with Section 15.020, item B prorated for each rate year, or portion of a rate year, included in the interim payment rate period.

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(2) The nursing facility's allowable debt, allowable interest rate, and allowable interest expense for the interim rate period shall be computed in accordance with Sections 15.050, 15.060, and 15.070.

(3) The settle-up building capital allowance shall be determined in accordance with Section 15.080 or 15.090.

(4) The equipment allowance shall be updated in accordance with Section 15.100 prorated for each rate year, or portion of a rate year, included in the interim payment rate period.

(5) The settle-up property-related payment rate must be the sum of subitems (3) and (4).

(6) Resident days may be used instead of 96 percent capacity days.

G. The property-related payment rate for the nine months following the settle-up for a nursing facility which commenced construction after June 30, 1985, shall be established in accordance with item F except that 96 percent capacity days must be used.

H. The property-related payment rate for the rate year beginning July 1 following the nine-month period in item G must be determined under this section.

I. A newly-constructed nursing facility or one with a capacity increase of 50 percent or more must continue to receive the interim property-related payment rate until the settle-up property-related payment rate is determined under this section.

J. The interim real estate taxes and special assessments payment rate shall be established using the projected real estate taxes and special assessments cost divided by anticipated resident days. The settle-up real estate taxes and special assessments payment rate shall be established using the real estate taxes and special assessments divided by resident days. The real estate and special assessments payment rate for the nine months following the settle-up shall be equal to the settle-up real estate taxes and special assessments payment rate.

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SECTION 16.000 PAYMENT FOR REAL ESTATE TAXES AND SPECIAL ASSESSMENTS

The total real estate taxes and actual special assessments and payments permitted under Section 5.000, item CC must be divided by actual resident days to compute the payment rate for real estate taxes and special assessments. Special assessments are reimbursed as paid by the facility except that facilities that incur special sewer assessments as part of their utility bill may reclassify that amount to the real estate tax and special assessment cost category. Real estate taxes are reimbursed based on the real estate tax assessed for the calendar year following the reporting year and are adjusted to account for the difference between the tax year and the reporting year in which the taxes are due. This adjustment is equivalent to $\frac{1}{2}$ the increase or decrease in the property tax liability of a facility. The Commissioner shall include the reported actual or payments in lieu of real estate taxes of each nursing facility as an operating cost of that nursing facility. Allowable costs under this subdivision for payments made by a nonprofit nursing facility that are in lieu of real estate taxes shall not exceed the amount that a nursing facility would have paid to a city or township and county for fire, police, sanitation and road maintenance costs had real estate taxes been levied on that property for those purposes.

SECTION 16.010 Payment for pre-admission screening fees. The estimated annual cost of screenings for each nursing facility are included as an allowable operating cost for reimbursement purposes. The estimated annual costs reported are divided by the facility's actual resident days for the cost report period. The resulting per diem amount is included in the calculation of the total payment rate under Section 17.000. However, these costs are not included in the calculation of either the care related or other operating cost limits, nor are they indexed to account for anticipated inflation.

SECTION 17.000 COMPUTATION OF TOTAL PAYMENT RATE

SECTION 17.010 Total payment rate. The total payment rate is the sum of the operating cost payment rate (including any efficiency incentive calculated under Sections 11.030 and 11.040, and the pre-admission screening cost per diem calculated under Section 16.010), the property-related payment rate, and the real estate tax and special assessments payment rate. The total payment rate becomes effective on July 1 of the rate year following the reporting year.

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SECTION 17.020 Private payment rate limitation. The total payment rate must not exceed the rate paid by private paying residents for similar services for the same period. The private payment rate limitation shall not apply to retroactive adjustments to the total payment rate unless the total payment rate being adjusted was subject to the private payment rate limitation.

SECTION 17.030 Private room payment rate. A private room payment rate of 115 percent of the established total payment rate for a resident must be allowed if the resident is a medical assistance recipient and the private room is considered as a medical necessity for the resident or others who are affected by the resident's condition except as in Section 15.110, item C. Conditions requiring a private room must be determined by the resident's attending physician and submitted to the department for approval or denial by the Department on the basis of medical necessity.

SECTION 17.040 Adjustment of total payment rate. If the Department finds nonallowable costs, errors, or omissions in the nursing facility's historical costs, the nursing facility's affected total payment rates must be adjusted. If the adjustment results in an underpayment to the nursing facility, the Department shall pay to the nursing facility the underpayment amount within 120 days of written notification to the nursing facility. If the adjustment results in an overpayment to the nursing facility, the nursing facility shall pay to the Department the entire overpayment within 120 days of receiving the written notification from the Department. Interest charges must be assessed on underpayment or overpayment balances outstanding after 120 days written notification of the total payment rate determination.

If an appeal has been filed under Section 18.000, any payments owed by the nursing facility or by the Department must be made within 120 days of written notification to the nursing facility of the Department's ruling on the appeal. Interest charges must be assessed on balances outstanding after 120 days of written notification of the Department's ruling on the appeal. The annual interest rate charged must be the rate charged by the Commissioner of the department of revenue for late payment of taxes, which is in effect on the 121st day after the written notification.

SECTION 18.000 APPEAL PROCEDURES

SECTION 18.010 Scope. A provider may appeal from a determination of a payment rate established pursuant to this attachment and reimbursement rules of the Department if the appeal, if successful, would result in a change to the provider's payment rate or to the calculation of maximum charges to therapy vendors under Section 20.030. Appeals must be

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filed in accordance with procedures in this section.

SECTION 18.020 Filing an appeal. To appeal, the provider will file with the Department a written notice of appeal; the appeal must be postmarked or received by the Commissioner within 60 days of the date the determination of the payment rate was mailed or personally received by a provider, whichever is earlier. The notice of appeal must specify each disputed item; the reason for the dispute; the total dollar amount in dispute for each separate disallowance, allocation, or adjustment of each cost item or part of a cost item; the computation that the provider believes is correct; the authority in statute or rule upon which the provider relies for each disputed item; the name and address of the person or firm with whom contacts may be made regarding the appeal; and other information required by the Commissioner.

SECTION 18.030 Contested case procedures appeals review process. Effective August 1, 1997, the following apply.

A. Effective for desk audit appeals for rate years beginning on or after July 1, 1997, and for field audit appeals filed on or after that date, the Commissioner shall review appeals and issue a written appeal determination on each appeals item within one year of the due date of the appeal. Upon mutual agreement, the Commissioner and the provider may extend the time for issuing a determination for a specified period. The Commissioner shall notify the provider by first class mail of the appeal determination. The appeal determination takes effect 30 days following the date of issuance specified in the determination.

B. In reviewing the appeal, the Commissioner may request additional written or oral information from the provider. The provider has the right to present information by telephone, in writing, or in person concerning the appeal to the Commissioner prior to the issuance of the appeal determination within six months of the date the appeal was received by the Commissioner. Written requests for conferences must be submitted separately from the appeal letter. Statements made during the review process are not admissible in a contested case hearing absent an express stipulation by the parties to the contested case.

C. For an appeal item on which the provider disagrees with the appeal determination, the provider may file with the Commissioner a written demand for a contested case hearing to determine the proper resolution of specified appeal items. The demand must be postmarked or received by the Commissioner within 30 days of the date of issuance specified in the determination. A contested case demand for an appeal item nullifies the written appeal determination issued by the Commissioner for that appeal item. The Commissioner shall refer

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any contested case demand to the Office of the Attorney General.

D. A contested case hearing must be heard by an administrative law judge. In any proceeding under this section, the appealing party must demonstrate by a preponderance of the evidence that the determination of a payment rate is incorrect.

E. Regardless of any rate appeal, the rate established must be the rate paid and must remain in effect until final resolution of the appeal or subsequent desk or field audit adjustment.

F. The Commissioner has discretion to issue to the provider a proposed resolution for specified appeal items upon a request from the provider filed separately from the notice of appeal. The proposed resolution is final upon written acceptance by the provider within 30 days of the date the proposed resolution was mailed to or personally received by the provider, whichever is earlier.

G. Effective August 1, 1997, the Commissioner may use the procedures described in this section to resolve appeals filed before July 1, 1997.

SECTION 18.040 Time and attendance appeals. The Commissioner shall settle unresolved appeals by a nursing facility of disallowances or adjustments of compensation costs for rate years beginning prior to June 30, 1994, by recognizing the compensation costs reported by the nursing facility when the appeal disallowances or adjustments were based on a determination of inadequate documentation of time and attendance or equivalent records to support payroll costs. The recognition of costs provided in this section pertains only to appeals of disallowances and adjustments based solely on disputed time and attendance or equivalent records. Appeals of disallowances and adjustments of compensation costs or failure to meet the general cost criteria under this plan are not governed by this section.

SECTION 18.050 Attorney's fees and costs.

A. For an issue appealed under Section 18.010, the prevailing party in a contested case proceeding or, if appealed, in subsequent judicial review, must be awarded reasonable attorney's fees and costs incurred in litigating the appeal, if the prevailing party shows that the position of the opposing party was not substantially justified. The procedures for awarding fees and costs set forth in state law regarding procedures for award of fees in contested cases must be followed in determining the prevailing party's fees and costs except as otherwise provided in this section. For purposes of this section, "costs" means subpoena fees and

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mileage, transcript costs, court reporter fees, witness fees, postage and delivery costs, photocopying and printing costs, amounts charged the Commissioner by the office of administrative hearings, and direct administrative costs of the Department; and "substantially justified" means that a position had a reasonable basis in law and fact, based on the totality of the circumstances prior to and during the contested case proceeding and subsequent review.

B. When an award is made to the Department under this section, attorney fees must be calculated at the cost to the Department. When an award is made to a provider under this section, attorney fees must be calculated at the rate charged to the provider except that attorney fees awarded must be the lesser of the attorney's normal hourly fee or \$100 per hour.

C. In contested case proceedings involving more than one issue, the administrative law judge shall determine what portion of each party's attorney fees and costs is related to the issue or issues on which it prevailed and for which it is entitled to an award. In making that determination, the administrative law judge shall consider the amount of time spent on each issue, the precedential value of the issue, the complexity, of the issue, and other factors deemed appropriate by the administrative law judge.

D. When the Department prevails on an issue involving more than one provider, the administrative law judge shall allocate the total amount of any award for attorney fees and costs among the providers. In determining the allocation, the administrative law judge shall consider each provider's monetary interest in the issue and other factors deemed appropriate by the administrative law judge.

E. Attorney fees and costs awarded to the Department for proceedings under this section must not be reported or treated as allowable costs on the provider's cost report.

F. Fees and costs awarded to a provider for proceedings under this section must be reimbursed to them by reporting within 120 days of the amount of fees and costs awarded as allowable costs final decision on the provider's cost report for the reporting year in which they were awarded. ~~Effective August 1, 1997, award of attorney fees and costs reported must be included in the general and administrative cost category but are not subject to categorical or overall cost limitations established in this State plan.~~

G. If the provider fails to pay the awarded attorney fees and costs within 120 days of the final decision on the award of attorney fees and costs, the Department may collect the amount due through any method available to it for the collection of medical assistance overpayments to providers. Interest charges must be assessed on balances outstanding after

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120 days of the final decision on the award of attorney fees and costs. The annual interest rate charged must be the rate charged by the Commissioner of revenue for late payment of taxes that is in effect on the 121st day after the final decision on the award of attorney fees and costs.

H. Amounts collected by the Commissioner pursuant to this section must be deemed to be recoveries.

I. This section applies to all contested case proceedings set on for hearing by the Commissioner on or after April 29, 1988, regardless of the date the appeal was filed.

SECTION 18.060 Legal and related expenses. Legal and related expenses for unresolved challenges to decisions by governmental agencies shall be separately identified and explained on the provider's cost report for each year in which the expenses are incurred. When the challenge is resolved in favor of the governmental agency, the provider shall notify the Department of the extent to which its challenge was unsuccessful or the cost report filed for the reporting year in which the challenge was resolved. In addition the provider shall inform the Department of the years in which it claimed legal and related expenses and the amount of the expenses claimed in each year relating to the unsuccessful challenge. The Department shall reduce the provider's medical assistance rate in the subsequent rate year by the total amount claimed by the provider for legal and related expenses incurred in an unsuccessful challenge to a decision by a governmental agency.

SECTION 19.000 SPECIAL EXCEPTIONS TO THE PAYMENT RATE

Section 19.010 Swing beds. Medical assistance must not be used to pay the costs of nursing care provided to a patient in a swing bed unless:

A. The facility in which the swing bed is located is eligible as a sole community provider, as defined in 42 CFR §412.92, or the facility is a public hospital owned by a governmental entity with 15 or fewer licensed acute-care beds.

B. Nursing facility care has been recommended for the person by a preadmission screening team.

C. The person no longer requires acute-care services.

D. No nursing facility beds are available within 25 miles of the facility.